

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 21, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JIMIA RAE CAIN,

Defendant.

No. 4:22-CR-06042-MKD

ORDER ACCEPTING GUILTY PLEA
AND SETTING SENTENCING
SCHEDULE

On November 21, 2022, Jimia Rae Cain appeared before the Court and entered a plea of guilty to Count 5 of the Indictment filed on September 8, 2022, charging her with False, Fictitious, or Fraudulent Claims, in violation of 18 U.S.C. § 287. Jennifer Rebecca Barnes appeared on behalf of Defendant. Daniel Hugo Fruchter and Tyler Howard Louis Tornabene appeared on behalf of the United States.

The Court finds that Defendant is fully competent and capable of entering an informed plea, that Defendant is aware of the nature of the charges and consequences of the plea, and that the plea of guilty is knowing, voluntary, is not

ORDER ACCEPTING GUILTY PLEA AND SETTING SENTENCING
SCHEDULE - 1

1 induced by fear, coercion, or ignorance, and is supported by an independent basis
2 in fact establishing each of the essential elements of the crime. Therefore,
3 Defendant's plea of guilty is accepted.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. A sentencing hearing is set for **June 1, 2023, at 1:30 p.m.**, in Richland
6 Courtroom 189. Absent truly exigent circumstances, the Court will not consider a
7 request for a continuance of sentencing unless: (1) the request is made by written
8 motion, (2) in accordance with LCivR 7, and (3) the motion and supporting
9 declaration are filed at least seven (7) days before the scheduled sentencing
10 hearing.

11 2. Defendant shall remain released to pretrial supervision pursuant to the
12 conditions of release previously imposed in this matter. ECF No. 15. **If a**
13 **sentence of incarceration is imposed, Defendant shall be taken into custody at**
14 **the time of sentencing.**

15 3. The United States Probation Office shall prepare a Presentence
16 Investigation Report (PSR) pursuant to Fed. R. Crim. P. 32(c).

17 4. Not later than **April 27, 2023**, the Probation Officer shall disclose the
18 PSR to Defendant, counsel for Defendant, and the United States. Disclosure of the
19 PSR shall be subject to the limitations imposed by Rule 32 of the Federal Rules of
20 Criminal Procedure.

ORDER ACCEPTING GUILTY PLEA AND SETTING SENTENCING
SCHEDULE - 2

1 5. Within 14 days of the disclosure of the PSR, counsel shall communicate
2 in writing to the Probation Office (and opposing counsel) any objections they may
3 have as to legal and factual errors or omissions; sentencing classifications;
4 sentencing guideline ranges; and policy statements contained in or omitted from
5 the report. Objections shall be numbered and identify the paragraph(s) to which
6 the objection applies. Objections shall address the PSR in sequential order,
7 beginning with the lowest numbered paragraph. If an objection is filed, the
8 Probation Officer shall conduct such additional investigation as is necessary to
9 assess the merits of the objection.

10 6. The Probation Officer shall submit the final PSR to the Court by **May 22,**
11 **2023.** The PSR shall be accompanied by an addendum setting forth any objections
12 counsel may have made, including those that have not been resolved, together with
13 the officer's comments and recommendations thereon. The Probation Officer shall
14 certify that the contents of the report, other than the sentencing recommendations,
15 including any revisions or addenda, have been disclosed to counsel for Defendant
16 and the United States, and that the addendum fairly states any remaining
17 objections. Except with respect to any written objection made as required above,
18 the PSR and computations shall be accepted by the Court as accurate. Upon a
19 timely objection by Defendant, the United States bears the burden of proof on any
20 fact that is necessary to establish the base offense level. The Court, however, for

1 good cause shown, may allow that a new objection be raised at any time before the
2 imposition of sentence. In resolving any disputed issues of fact, the Court may
3 consider any reliable information presented by the Probation Officer, Defendant, or
4 the United States.

5 Nothing in this Order requires the disclosure of any portions of the PSR that
6 are not disclosable under Fed. R. Crim. P. 32. The PSR shall be deemed to have
7 been disclosed: (1) when a copy of the report is physically delivered; or (2) one
8 day after the report's availability for inspection is orally communicated; or (3)
9 three days after a copy of the report or notice of its availability is mailed to
10 counsel, whichever date is earlier.

11 7. Not later than **May 17, 2023**, counsel shall file and serve all motions and
12 memoranda pertaining to Defendant's sentence, including departures and
13 variances, and sentencing recommendations.

14 a. Counsel shall utilize the following format when preparing initial
15 sentencing memoranda which are limited to 20 pages (absent prior
16 Court permission to file an overlength brief): I. Offense Level &
17 Criminal History, II. Departures, III. 18 U.S.C. § 3553(a).

18 b. Under Section I. Offense Level & Criminal History, counsel shall
19 discuss whether the PSR's Total Offense Level calculations (not
20

1 including departures) and Criminal History calculation are correct or
2 incorrect, providing legal authority for the party's position.

3 c. Under Section II. Departures, counsel shall discuss whether a
4 downward and/or upward departure is warranted under the Guidelines
5 and provide legal authority for such position.

6 d. Under Section III. 18 U.S.C. § 3553(a), counsel shall discuss whether
7 the resulting guideline range provides a reasonable sentence
8 sufficient, but not greater than necessary to comply with the purposes
9 set forth in 18 U.S.C. § 3553(a)(2), considering the other factors listed
10 in § 3553(a).

11 e. **FAILURE TO FILE AND SERVE SENTENCING MATERIAL**
12 **BY THIS DATE, OR TO INCLUDE MOTIONS OR**
13 **MEMORANDA FOR UPWARD OR DOWNWARD**
14 **DEPARTURE, WILL BE DEEMED A WAIVER OF THE**
15 **RIGHT TO DO SO.**

16 8. Not later than **May 25, 2023**, the opposing party shall file and serve its
17 response limited to no more than seven (7) pages.

18 9. If Defendant intends to qualify for the safety valve, the parties must
19 schedule a meeting to conduct a safety valve interview to determine if the
20

1 Defendant has met the requirements of U.S.S.G. § 5C1.2(a)(5) no later than **May**
2 **11, 2023.**

3 10. If either party intends to call witnesses or proffer exhibits at sentencing,
4 witness and exhibit lists must be exchanged by the parties and provided to the
5 Court no later than **May 25, 2023.**

6 11. Sentencings shall be scheduled for a total of 45 minutes. If it is believed
7 that the sentencing hearing will last longer than 45 minutes, counsel shall contact
8 Chambers no later than **May 25, 2023.**

9 12. All pending motions pertaining to Defendant are **DENIED as moot** and
10 all pending hearing and trial dates pertaining to Defendant are **STRICKEN** from
11 the Court's calendar.

12 13. By and through this Order, the District Court Executive is authorized to
13 accept Defendant's payment in the amount of \$100 per count, for a total of \$100,
14 toward Special Penalty Assessments.

15 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
16 this Order and provide copies to counsel, the United States Probation Office, and
17 the United States Marshals Service.

18 DATED November 21, 2022.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES DISTRICT JUDGE

ORDER ACCEPTING GUILTY PLEA AND SETTING SENTENCING
SCHEDULE - 7